


## Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Stephen M. Haase

**SUBJECT:** SEE BELOW

**DATE:** September 30, 2004

Approved: 

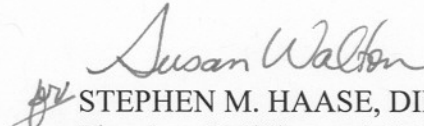
Date: 9/30/04

COUNCIL DISTRICT: 5

**CP04-046. APPEAL OF A CONDITIONAL USE PERMIT FOR THE PROPERTY LOCATED ON THE NORTHEAST CORNER OF JACKSON ROAD AND MCKEE ROAD, TO ALLOW OFF-SALE OF ALCOHOLIC BEVERAGES AS AN ANCILLARY USE TO A FULL-SERVICE GROCERY STORE ON A 9.5 GROSS ACRE SITE.**

### SUPPLEMENTAL MEMO

Additional information has been received by Planning staff which include a letter from the project appellant, a clarification memorandum from the City of San Jose Police Department, and additional petitions signed by approximately 200 residents showing support for the Chavez Supermarket. Staff's report to the Council, in response to the subject appeal, was previously transmitted on September 17, 2004. We hope the submittal of this report and back-up documentation is of assistance in your review of this project.

  
STEPHEN M. HAASE, DIRECTOR  
Planning, Building and Code Enforcement

#### Attachments:

1. Letter from the appellant, dated, September 21, 2004
2. Memorandum from the City of San Jose Police Department, dated, September 27, 2004
3. Signed petition(s) in support of the proposed use

McKee Oriental Market  
2331 McKee Road  
San Jose, CA 95116

September 21, 2004

Mr. Michael Mena, Project Manager  
Department of Planning, Building & Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110

RE: Appeal: CP04-046 & ABC04-004  
City Council Hearing Date: Tuesday, September 21, 2004  
Conditional Use Permit: CP04-046  
Alcohol Beverage Control Exception: ABC04-004  
Applicant: David & Esperanza Chavez Family LP, DBA Chavez Supermarket  
Address: 2327 McKee Road (NE Corner of McKee & Jackson Roads)  
Property Owner: Chi Chiu Lo Trust

Dear Mr. Mena:

We were notified by Ryan that he received a call from Ms. Susan Walton from your office late yesterday indicating that the Director, Mr. Stephen Haase, has requested to continue this appeal until October 5<sup>th</sup>, in order to secure additional information from the San Jose Police Department (SJPd).

We have no problem in securing additional information from the SJPd, however, a one day notice to the community is not acceptable! In order to do this right, we need a commitment from the Planning Department that it will re-notify the neighborhood and allow them time to reschedule their time to speak in favor or against the appeal. This is only the right way to do it.

Deferring the appeal 2 weeks without re-notifying the neighborhood to participate is unacceptable! This gives the appearance of a conspiracy within your department and/or City Hall to not allow the neighborhood to express their feelings regarding this matter.

We need a commitment from you and your office that you will re-notify the neighborhood via mail and re-determine an acceptable time to hear the item before the City Council.

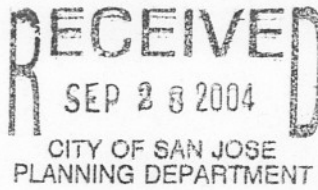
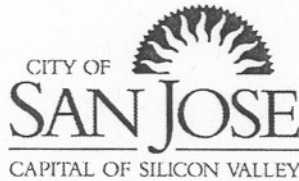
Please let us know when your department determines the appropriate time to hear this item before the City Council.

Sincerely,

*Dan Trinh*

Dan Trinh

cc: Councilmember Nora Campos, District 5  
Mr. Stephen Haase, Director, PBCE



## Memorandum

**TO:** Michael Mena  
Planning Department

**FROM:** Off. Dave Kirkendall #1749  
San Jose Police Vice Unit

**SUBJECT:** CP 04-046/ABC 04-004

**DATE:** September 27, 2004

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Approved

Date

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On September 7, 2004 the San Jose Police Department received a Public Records Act Request from Mr. J. Randall Toch, the attorney representing the Chavez Market, 2327 McKee Road, San Jose, Ca.

Part of that request essentially required us to review the Police Departments process in coming up with the Crime Index Report statistics. The issue was researched with the Police Departments Crime Analysis Unit and the San Jose branch of the California Department of Alcohol Beverage Control. It appears that some of the statistical information the Police Department used and the method of totaling those statistics was incorrect.

Per California Business and Professions Code Section 2958.4(c)(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations (ABC advised this refers to infractions).

In the previous Crime Index Report the Index Crimes Section was the totals of the seven crimes listed above. The Arrests Section in the previous report totaled all index crime arrests, all other arrests, both felonies and misdemeanors and traffic citations. The Index Crimes and Arrests Sections were added together for a Crime Index for the Police Beat. All of the Police Beats statistics are totaled and divided by the number of Police Beats for a Crime Index Average and 20% is added to that average to get the 20% threshold figure.

The corrected Crime Index Report removes the index crime arrests and traffic citations (Infractions) from the Arrests Section. Logically the numbers in the Arrests section decreased, but it was anticipated that there would be little if any change in the number of Police Beats that were above the 20% Crime Index.

The corrected Crime Index Report has been completed and as expected there was minimal change in the number of Police Beats that are above the 20% Crime Index. Of the 83 Police Beats identified in the Crime Index Report, three (3) Police Beats dropped below the 20% Crime Index. The corrected Crime Index Report is also based on the most current figures available and part of the drop could be attributed to a reduction in police activity.

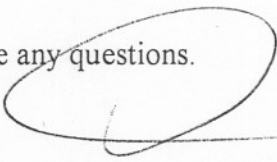
With reference to the Chavez Market the updated Crime Index information shows the business is still over the 20% Crime Index. The location is in San Jose Police Beat M1. The reported crime statistics as defined by B&P Section 23958.4(c)(2) **are** significantly over the 20% crime index thus the location **is** considered unduly concentrated per B&P Section 23958.4 (a)(1). An exception permit would have to be granted for the location.

**Fiscal Year 2003-2004 Police Beat Crime Statistics**

Beat	Index Crimes	Arrests	Total	20% Above Average
M1	411	528	939	YES
City Average	317	293	610	NO
Average + 20%	380	352	732	YES

The Police Department remains neutral on the proposed CUP. I have attached a copy of the previous Crime Index Report for Calendar year 2003 and the updated Crime Index Report, which covers Fiscal Year 2003-2004.

Please feel free to contact me at 277-4322 if you have any questions.

  
Dave Kirkendall #1749  
Administrative Officer  
Special Investigations/Vice



**REPORTED CRIME STATISTICS  
AS DEFINED BY ASSEMBLY BILL NO. 2897**

**CALENDAR YEAR 2003**

BEAT	INDEX CRIMES	ARRESTS	TOTAL	20% Above Average?		BEAT	INDEX CRIMES	ARRESTS	TOTAL	20% Above Average?
A1	232	180	412	no		N1	237	168	405	no
A2	366	463	829	yes		N2	359	215	574	no
A3	523	513	1036	yes		N3	328	246	574	no
A4	242	238	480	no		N4	188	222	410	no
A5	328	208	536	no		N5	271	369	640	no
						N6	376	349	725	no
C1	299	697	996	yes						
C2	333	397	730	no		P1	656	707	1363	yes
C3	389	770	1159	yes		P2	373	297	670	no
C4	147	162	309	no		P3	406	489	895	yes
C5	203	276	479	no		P4	458	359	817	yes
C6	237	308	545	no		P5	332	295	627	no
						P6	97	44	141	no
E1	123	352	475	no						
E2	260	827	1087	yes		R1	412	176	588	no
E3	288	764	1052	yes		R2	362	211	573	no
E4	181	403	584	no		R3	500	421	921	yes
						R4	304	280	584	no
F1	234	171	405	no		R5	322	180	502	no
F2	618	606	1224	yes						
F3	258	280	538	no		S1	279	392	671	no
F4	196	320	516	no		S2	277	246	523	no
F5	298	377	675	no		S3	202	339	541	no
						S4	233	274	507	no
K1	82	257	339	no		S5	209	478	687	no
K2	132	189	321	no		S6	253	520	773	no
K3	147	219	366	no						
K4	190	407	597	no		T1	192	203	395	no
K5	173	249	422	no		T2	336	330	666	no
K6	159	164	323	no		T3	372	382	754	no
						T4	210	244	454	no
L1	262	760	1022	yes		T5	312	316	628	no
L2	409	578	987	yes						
L3	517	501	1018	yes		V1	165	233	398	no
L4	338	501	839	yes		V2	205	500	705	no
L5	246	404	650	no		V3	219	397	616	no
L6	334	386	720	no		V4	195	367	562	no
M1	460	686	1146	yes		W1	501	396	897	yes
M2	254	372	626	no		W2	350	1013	1363	yes
M3	147	362	509	no		W3	264	270	534	no
M4	241	471	712	no		W4	384	647	1031	yes
M5	380	545	925	yes						

**REPORTED CRIME STATISTICS  
AS DEFINED BY ASSEMBLY BILL NO. 2897**

CALENDAR YEAR 2003

BEAT	INDEX CRIMES	ARRESTS	TOTAL	20% Above Average?		INDEX CRIMES	ARRESTS	TOTAL	
X1	517	482	999	yes		Average 298	379	677	
X2	249	311	560	no					
X3	399	568	967	yes		Average			
X4	321	326	647	no		plus 20% 358	455	813	
X5	313	357	670	no					
Y1	312	314	626	no					
Y2	266	275	541	no					
Y3	324	362	686	no					
Y4	478	397	875	yes					
Y5	418	391	809	no					
DD	75	150	225	no					

**REPORTED CRIME STATISTICS**  
**AS DEFINED BY BUSINESS AND PROFESSIONS CODE 23958.4(c)(2)**

FISCAL YEAR 2003-2004

BEAT	INDEX CRIMES	ARRESTS	TOTAL	20% Above Average?	BEAT	INDEX CRIMES	ARRESTS	TOTAL	20% Above Average?
A1	252	133	385	no	N1	247	92	339	no
A2	387	234	621	no	N2	364	131	495	no
A3	673	314	987	yes	N3	333	201	534	no
A4	273	180	453	no	N4	199	192	391	no
A5	350	120	470	no	N5	325	274	599	no
					N6	421	207	628	no
C1	302	512	814	yes					
C2	336	318	654	no	P1	686	246	932	yes
C3	408	660	1068	yes	P2	372	211	583	no
C4	157	126	283	no	P3	479	261	740	yes
C5	205	232	437	no	P4	471	277	748	yes
C6	250	276	526	no	P5	339	210	549	no
					P6	111	20	131	no
E1	128	302	430	no					
E2	267	798	1065	yes	R1	505	121	626	no
E3	298	755	1053	yes	R2	393	127	520	no
E4	189	324	513	no	R3	482	274	756	yes
					R4	340	184	524	no
F1	249	109	358	no	R5	382	139	521	no
F2	709	144	853	yes					
F3	293	228	521	no	S1	326	290	616	no
F4	200	276	476	no	S2	326	170	496	no
F5	354	246	600	no	S3	233	243	476	no
					S4	259	171	430	no
K1	85	243	328	no	S5	195	354	549	no
K2	148	168	316	no	S6	209	371	580	no
K3	180	172	352	no					
K4	237	371	608	no	T1	213	162	375	no
K5	185	255	440	no	T2	385	154	539	no
K6	156	138	294	no	T3	420	246	666	no
					T4	227	186	413	no
L1	312	578	890	yes	T5	294	266	560	no
L2	336	369	705	no					
L3	493	327	820	yes	V1	143	176	319	no
L4	341	389	730	no	V2	215	417	632	no
L5	294	283	577	no	V3	202	354	556	no
L6	348	257	605	no	V4	190	326	516	no
M1	411	528	939	yes	W1	567	258	825	yes
M2	249	308	557	no	W2	391	1754	2145	yes
M3	188	344	532	no	W3	275	192	467	no
M4	262	378	640	no	W4	385	521	906	yes

**REPORTED CRIME STATISTICS**  
**AS DEFINED BY BUSINESS AND PROFESSIONS CODE 23958.4(c)(2)**

**FISCAL YEAR 2003-2004**

M5	459	369	828	yes					
BEAT	INDEX CRIMES	ARRESTS	TOTAL	20% Above Average?		INDEX CRIMES	ARRESTS	TOTAL	
X1	571	323	894	yes	Average	317	293	610	
X2	228	216	444	no					
X3	375	477	852	yes	Average				
X4	340	291	631	no	plus 20%	380	352	732	
X5	330	257	587	no					
Y1	294	175	469	no					
Y2	307	246	553	no					
Y3	360	259	619	no					
Y4	461	289	750	yes					
Y5	427	254	681	no					
DD	72	128	200	no					



Date: 9-15-04

The Honorable Mayor Ron Gonzales  
and Members of the San Jose City Council  
City of San Jose  
801 North First Street  
San Jose, CA 95110

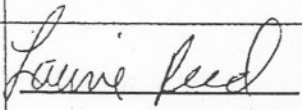
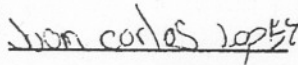
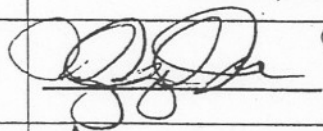
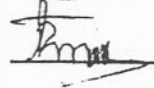
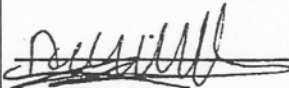
Re: **Chavez Supermarkets - CP 04-046 and ABC 04-004**  
(Issued by San Jose Planning Commission on July 14, 2004)  
Property Address: **2327 McKee Road, San Jose**  
APN: **Portion of 254-07-064**

Dear Mayor Gonzales and Members of the City Council:

We support the right of Chavez Supermarkets to provide a full service supermarket in San Jose and urge you to reject the appeal of CP 04-046 and ABC 04-004, which were filed by a competitor of Chavez Supermarkets in a blatant attempt to stifle competition and unfairly restrict our right to shop at the business of our choice.

Chavez Supermarkets is a successful, minority owned, local family business that strives to serve the grocery needs of our community by selling the finest butcher shop quality meats, fresh produce, grocery staples, along with a full line of Mexican foods. This is threatening to other stores, who are trying to use you to restrict their competition.

Don't be misled by the false and inflammatory literature that has been circulated – unsigned – by opponents of the permit. We resent any suggestion that customers of Chavez Supermarket are less able to make wise shopping choices than customers of other grocery stores. Chavez Supermarkets are neat, clean, and well stocked, and we welcome them to our community. We look forward to having a Chavez Supermarket on McKee Road and urge you to allow it to stock a full line of supermarket items.

	Signature	Print Name	Address
1.		Laurie Reed	523 Lanning Ct. San Jose CA 95133
2.		Jon Carlos Lopez	539 Dons Glen way San Jose CA 95133
3.		RUDY RAGUE	1331 JEFFERSON AVE #109 REDWOOD CITY, CA 94062
4.		TOMASA RAMIREZ	2346 BRUSHGLEN WAY
5.	Abel Moreno		2346 Brush Glen way